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No. 89-1166

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ARTHUR GROVES, BOBBY J. EVANS and LOCAL 771, INTERNATIONAL UNION UAW,

Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF AMICUS CURIAE OF THE MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., IN SUPPORT OF THE RESPONDENT

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The Motor Vehicle Manufacturers Association of the United States, Inc. ("MVMA") respectfully submits this brief as amicus curiae in support of the respondent.[1]

[1] The written consent of each of the parties to the filing of this brief has been filed with the Clerk.

INTEREST OF THE AMICUS CURIAE

MVMA is a trade organization whose member companies build 94% of all motor vehicles produced in the United States and numerous other products. MVMA members include Chrysler Corporation; Ford Motor Company; General Motors Corporation; Honda of America Manufacturing, Inc.; Navistar International Transportation Corp.; PACCAR, Inc.; and Volvo North American Corporation.

MVMA member companies employ over 1.2 million workers. A substantial proportion of those workers are represented by unions and covered by collective bargaining agreements. Virtually all of those collective bargaining agreements include grievance procedures; most provide for arbitration of disputes but some do not. Even those agreements that do provide for arbitration usually designate some significant issues as nonarbitrable. In several of the agreements, the Union and the employer have provided that if a nonarbitrable grievance is not resolved through the prescribed procedure, the Union is relieved of its obligations under the no-strike clause.

This case presents an issue of great importance to MVMA members and to other employers throughout the country whose employees are covered by collective bargaining agreements that exclude all or certain issues from arbitration. The court of appeals' holding that petitioners were bound by the result of the grievance process correctly captures the intent of the parties to such agreements and properly reflects federal labor policy. A decision to the contrary by this Court would greatly disrupt the labor relations of MVMA members.

STATEMENT

The Ring Screw Works Company produces screws, clamps and other fastening devices for the automobile industry. Its production and maintenance employees are represented for purposes of collective bargaining by Local No. 771 of the International Union, United Automobile Aircraft and Agricultural Implement Workers of America (UAW), AFL-CIO. The Company discharged two of those employees—Arthur Groves and Bobby J. Evans—for excessive absenteeism and for falsifying company records, respectively.

The collective bargaining agreement between the Company and Local 771 includes a detailed, five-step grievance procedure for resolving any "difference[s] * * * between the Company and the Union, or its members employed by the Company, as to the meaning and application of the provisions of the agreement." At step one, the employee and his Union steward present the grievance to the foreman of the department. If the matter is not resolved at that stage, at step two the Manufacturing Manager or his designee hears the grievance. The third step of the grievance process involves Company Management and the Union's elected, six-employee Shop Committee. If there is still no resolution, at step four a Local or International Union Representative joins the Shop Committee in presenting the grievance to Plant Management. If the matter is not resolved at step four, the "Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. (This may include arbitration by mutual agreement in discharge cases only)." J.A. 51.

If a grievance is not resolved to the Union's satisfaction after the grievance process is exhausted, the Union is relieved from its contractual obligation not to strike.

The grievance procedure in the contract applicable to petitioner Evans provides that "[u]nresolved grievance[s] (except arbitration decisions) shall be handled as set forth in Article XVI, Section 7." J.A. 53. That section provides that "[t]he Union will not cause or * * * take part in any strike * * * during the term of this agreement until all negotiations have failed through the grievance procedure set forth therein." J.A. 69.[2]

Both Groves and Evans filed grievances contesting their discharge. The Union pursued the grievance through all of the steps of the grievance procedure, but then declined to exercise its right to strike. Instead, the two employees filed suit against the Company under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, joining the Union as an additional plaintiff. The complaint alleged that Groves and Evans had been discharged without just cause in violation of the collective bargaining agreement. It did *not* allege that the Union had breached its duty of fair representation.

The district court held that the employees were bound by the results of the grievance procedure, and that they could not bring a Section 301 suit against their employer unless they alleged that the Union had breached its duty of fair representation. Pet. App. 26a-27a. The court of appeals affirmed, relying on its previous decision in *Fortune* v. *National Twist Drill & Tool Division*, 684 F.2d 374 (6th Cir. 1982). "This court has previously concluded that failure to reach an agreement through a similar grievance procedure nevertheless produced a final decision and such procedure was deemed exclusive." Pet. App. 6a.

[2] The language of the agreement applicable to petitioner Groves differed somewhat from that of the agreement applicable to Evans, but as petitioners conceded below, "[t]he differences [between the two agreements] are immaterial to the issue in the case." Pet. App. 7a.

INTRODUCTION AND SUMMARY OF ARGUMENT

At first blush, this case might seem to involve an unusual collective bargaining agreement that does not provide for arbitration and unique circumstances in which discharged employees are left without a remedy. It might seem that the equities of those unique circumstances would justify a departure from the usual rules that (1) "[s]ince the employee's claim is based upon breach of the collective bargaining agreement, he is bound by terms of that agreement which govern the manner in which contractual rights may be enforced," *Vaca* v. *Sipes*, 386 U.S. 171, 184 (1967); and (2) "[a]ny doubts" about whether the parties intended a grievance procedure to be the final and exclusive remedy must be resolved in favor of finality and exclusivity. *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650, 659 (1965).

But that first impression would be seriously mistaken. In reality, this case presents an issue of great general importance that could arise under many collective bargaining agreements. A departure from the usual rules would be neither small nor justified. Instead, it would represent a fundamental restructuring of the bargain struck by thousands of employers and unions throughout the country. The federal courts would become forums to review countless disputes that employers and unions reasonably anticipated would be resolved solely by the means set out in the collective bargaining agreement.

MVMA has filed this brief to inform the Court of the general importance of the issues raised and the fact that acceptance of petitioners' arguments would have serious and disruptive consequences ranging far beyond the context of this particular case.

I. Federal Labor Relations Policy Requires That Employees, Employers And Unions Be Bound By The Results Achieved Through The Dispute Resolution Method Agreed Upon In Collective Bargaining.

Over the years, this Court has carefully considered the circumstances under which an employee, a union, or an employer can invoke the jurisdiction of a court to resolve disputes arising under a collective bargaining agreement. The Court has recognized that collective bargaining agreements are not the same as ordinary commercial contracts; they are more like constitutions that establish the relationship between the parties, the basic rights of those parties, and the system of industrial self-governance that the parties will follow. The rights those agreements define are limited by the contractual procedures prescribed for their enforcement. Even though at times an employee's claim may seem to be meritorious under the terms of an agreement and it also may seem that he is left without a remedy,[3] this Court has recognized the importance of giving effect to the final resolution of the contractual enforcement mechanism, provided that the process has not been tainted by fundamental unfairness. Petitioners' claim must be evaluated against the framework of this Court's decisions.

Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, authorizes "[s]uits for violation of contracts between an employer and a labor organization representing employees." In *Smith* v. *Evening News Association*,

[3] A prime example is a case in which a union, acting in good faith, declines to take an employee's meritorious grievance to arbitration. The employee may be seen as lacking a remedy, but this Court has wisely held that the Union's decision is ordinarily not subject to judicial review. *Vaca* v. *Sipes*, 386 U.S. 171, 191-192 (1967).

371 U.S. 195, 196 n.1 (1962), the Court held that Section 301 permitted an individual employee to bring a suit against his employer alleging breach of a collective bargaining agreement when that agreement contained no dispute resolution procedure.

Section 301 must be read, however, in conjunction with Section 203(d) of the same statute, 29 U.S.C. § 173(d):

> Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.

In *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650, 653 (1965), the Court held that an employee could not bypass the contractual grievance procedure by instead suing in court under Section 301:

> A contrary rule which would permit an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it. * * * [I]t would deprive employer and union of the ability to establish a uniform and exclusive method for orderly settlement of employee grievances. If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation "would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." *Teamsters Local* v. *Lucas Flour Co.*, 369 U.S. 95, 103.

The Court acknowledged that if the collective bargaining agreement *expressly provided* that the grievance procedure was not the final and exclusive remedy, a suit would be permitted. 379 U.S. at 657-658. But absent such an express waiver, even the use of permissive language (*e.g.*, disputes "may" be resolved through the grievance proce-

dure) cannot be construed to imply that the grievance procedure is not final and exclusive. *Id.* at 658-659. "Any doubts must be resolved against such an interpretation." *Id.* at 659.

Employees are not only required to pursue their disputes through the contractual grievance procedure, but they are also bound by the results achieved through that process. *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976); *Vaca* v. *Sipes*, 386 U.S. 171 (1967). Unless it can be shown that the employer repudiated the contract's remedial provisions or that the union violated its duty of fair representation, the result reached through the grievance process is final and conclusive. *DelCostello* v. *Teamsters*, 462 U.S. 151, 163-164 (1983); *Bowen* v. *United States Postal Service*, 459 U.S. 212, 220-222 (1983); *Vaca* v. *Sipes*, 386 U.S. at 185.

These cases give effect to the important policy reflected in Section 203(d). As this Court has explained, the parties to a collective bargaining agreement are expected not merely to establish concrete terms of employment, but to set up a system for dealing with the disputes that inevitably will arise in the employment relationship:

> Fundamental to federal labor policy is the grievance procedure. It promotes the goal of industrial peace by providing a means for labor and management to settle disputes through negotiation rather than industrial strife. Adoption of a grievance procedure provides the parties with a means of giving content to the collective-bargaining agreement and determining their rights and obligations under it.

Bowen v. *United States Postal Service*, 459 U.S. at 225 (citations omitted). Thus, the "congressional policy [reflected in Section 203(d)] 'can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play.' " *Hines* v. *Anchor Motor Freight*, 424 U.S. at 562, quoting *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 566 (1960).

In considering petitioners' claim, it is essential to bear in mind that Section 203(d) does *not* provide for arbitration as the preferred method of resolving disputes. To the contrary, when it enacted Section 203(d), Congress expressly rejected the notion that parties should be compelled to arbitrate disputes. II NLRB, *Legislative History of the Labor Management Relations Act, 1947*, at 1520 (Reprint ed. 1985) (Statement of Senator Taft). Instead, Congress declared that the "method agreed upon by the parties * * * for settlement of grievance disputes"—whether that method is arbitration or a grievance procedure without arbitration—must be given full effect. 29 U.S.C. § 173(d).

The critical question in this case is therefore easy to state: what method did the parties intend would be used to settle grievances?[4] Did they intend that the Union's right to strike would be the only remedy if a dispute is not resolved through the grievance process? Or did they intend that the Union be given the choice between striking or going to court—and that individual employees be permitted to go to court on their own even if the Union makes a good faith determination not to strike or to pursue the matter further?[5]

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[4] Petitioners tacitly acknowledge that this is the critical question by agreeing that the Court would be required to give effect to a grievance procedure that was final and binding if such an intent is clearly expressed. Pet. Br. at 8.

[5] We, of course, acknowledge that if a decision not to strike or some other aspect of a union's handling of a grievance constitutes bad faith and a breach of the duty of fair representation, a Section 301 suit against both the union and the employer would be permitted. *Hines* v. *Anchor Motor Freight*, 424 U.S. at 571.

Petitioners would have this Court adopt a presumption that in cases like this one the parties did not intend to preclude enforcement in court unless they clearly expressed the contrary intention. But, as we point out below, there would be no basis in fact for such a presumption. Instead, it would contravene the intent of collective bargaining parties and seriously disrupt their settled expectations.

II. Petitioners' Argument, If Accepted, Would Have A Substantial, Unforeseen And Disruptive Impact On Collective Bargaining Agreements Affecting Thousands Of Employers And Millions Of Employees.

The collective bargaining agreement involved in this case included a grievance procedure but did not require arbitration of any dispute. Instead, the Union had the express right to strike over unresolved grievances. That arrangement is relatively uncommon, but certainly not unknown. According to data compiled by the federal Bureau of Labor Statistics, 3.3% of 1,550 surveyed collective bargaining agreements covering 1,000 or more workers contained no provision for arbitration of disputes. U.S. Department of Labor, Bureau of Labor Statistics, *Characteristics of Major Collective Bargaining Agreements, January 1, 1980* [hereinafter "*BLS Study*"], at 113 (1981).

The question presented by this case cannot, however, be regarded as affecting only that relatively small percentage of labor contracts. The issue in this case is whether a Section 301 suit can be brought to enforce the terms of a collective bargaining agreement that includes a comprehensive grievance procedure but does not provide for final and binding arbitration of all unresolved grievances.[6] That

[6] In this case, the agreement authorized the Union to strike over unresolved grievances. J.A. 34, 69. Although it is quite common

(Footnote continued on following page)

issue can and will arise under a very large number of collective bargaining agreements. According to Bureau of Labor Statistics data, over 31% of agreements surveyed either do not provide for arbitration or designate certain substantial issues that are specifically excluded from arbitration. *BLS Study* 113.[7] Those agreements covered over 40% of the 6,600,000 employees involved in the survey. *Ibid.* A substantial majority of collective bargaining agreements in the survey (58% of agreements covering 70% of employees) either did not prohibit strikes or—far more commonly—included specific exclusions from the no-strike obligation. *Id.* at 114. These data reflect a common phenomenon in collective bargaining: the parties very often specifically exclude certain issues from arbitration or limit the arbitration clause to certain issues such as employee discharge. Because the no-strike clause is regarded as the "quid pro quo" for the arbitration clause, when issues are excluded from arbitration the parties frequently agree that strikes over those issues are also excluded from the no-strike clause.

[6] *continued*
for collective bargaining agreements to relieve unions from their obligations under no-strike clauses when there is a dispute over a nonarbitrable issue, the fact that the agreement permits a strike in these circumstances is not of critical importance. This case would surely have been decided the same way had the agreement included a comprehensive grievance procedure that did not provide for arbitration and also did *not* permit the Union to strike over unresolved grievances.

[7] The Bureau of National Affairs maintains a database of 400 collective bargaining agreements. According to its data, specific issues are excluded from arbitration in 36% of those contracts. 2 Bureau of National Affairs, *Collective Bargaining Negotiations and Contracts* 51:5 (1990). In 17% of the contracts, the union's no-strike obligation is expressly lifted after the grievance process is exhausted, or if the issue in dispute falls outside the grievance procedure, or if the employer declines to arbitrate the issue. *Id.* at 77:1.

What Professor David Feller found when he wrote his classic article on collective bargaining agreements in 1973 is still true today: examples abound of major agreements that exclude significant issues from arbitration.[8] For example,[9] the agreement between General Motors Corporation and UAW covering approximately 335,000 production and maintenance employees expressly excludes from arbitration issues involving production standards, establishing wages, and several benefit programs. 1 Bureau of National Affairs, *Collective Bargaining Negotiations and Contracts* [hereinafter "*BNA Contracts*"] at 21:23. As to some of those issues, the Union is permitted to strike after it exhausts the contractual procedure:

> The Union will not cause or permit its members to cause * * * any strike or stoppage * * * in [any] case on which the [Arbitrator] shall have ruled, and in no other case on which the [Arbitrator] is not empowered to rule until after negotiations have continued for at least five days a. the third step of the Grievance Procedure.

Id. at 21:40.

[8] Feller, *A General Theory of the Collective Bargaining Agreement*, 61 Calif. L. Rev. 663, 792-794 (1973) [hereinafter, "Feller, *General Theory*"].

[9] The examples we cite were found among the seven private-sector collective bargaining agreements printed in full in 1 Bureau of National Affairs, *Collective Bargaining Negotiations and Contracts* chap. 20 (1990). Obviously, a more comprehensive review of labor contracts would identify many more examples. One of the seven agreements in the BNA volume—that between Ohio Bell Telephone Company and the Communications Workers of America, covering 10,000 employees—operates very much like the agreement involved in this case. It includes a grievance procedure that does not provide for arbitration (*id.* at 22:10) and it does not prohibit strikes over unresolved grievances.

The labor agreement between General Electric Company and the International Union of Electrical Workers (covering 42,000 hourly and salaried employees) includes a lengthy list of items that can be submitted to arbitration only if the company consents. *Id.* at 23:19.[10] Among the issues excluded are rates of pay, job assignments, incentive rates, discipline or discharge of probationary employees and issues involving pension and benefit plans. *Ibid.* Again, the no-strike clause of the agreement does not prohibit the Union from striking over those issues after it exhausts the applicable steps of the grievance procedure:

> There shall be no strike * * * of any kind in connection with any matter subject to the grievance procedure * * * unless and until all of the respective provisions of the successive steps of the grievance procedure * * * shall have been complied with by the Local and the Union. The foregoing exception will not apply if * * * the matter is submitted to arbitration.

Id. at 23:16-17.

The agreement between Boeing Company and the International Association of Machinists covering 42,500 production and maintenance employees (*id.* at 20:33) contains an unusual clause providing "that any dismissal or suspension of an employee who has committed a sex crime victimizing a child or children * * * shall not be subject to the grievance and arbitration procedure of this Article 19."[11]

[10] The agreements between Ring Screw and the UAW similarly provided for arbitration of discharge cases only upon the consent of the company. J.A. 17, 51.

[11] Professor Feller describes several similar examples that he found in 1973, including contracts of the Bell System, Allen-Bradley Co., General Motors and United States Steel. Feller, *General Theory* at 793-794.

The question presented by petitioners can be expected to arise with some frequency under contracts which exclude specific matters from arbitration.[12] Like the agreement involved in this case, none of the sample agreements mentioned above specifically provides that the grievance procedure (or the strike remedy) shall be final and binding as to matters excluded from arbitration. Thus, under those agreements, controversies will arise in which employee grievances will not be subject to arbitration and no further contractual remedy (except perhaps the right to strike) will be available.

Because it is clear under federal law that the courts should give effect to whatever dispute resolution method the parties have agreed upon, the question these contracts present is what did the parties intend by excluding specific matters from arbitration or by providing for a grievance procedure without mandatory arbitration? For example, by excluding claims involving the discharge of probationary employees from the arbitration clause, did General Electric and the Electrical Workers intend that discharge claims involving probationary employees should be heard only in court in the form of Section 301 actions? Or did they intend that management decisions to discharge probationary employees should not be reviewable at all? By excluding production standards and special benefits policies from the arbitration clauses of their contracts, did General Motors and the Union representing its employees intend that any disputes would be resolved through Section 301 suits, or that the results of the grievance process would be final and binding?

[12] Our assertion that the question presented by petitioners will arise under contracts which exclude specific matters from arbitration is not at all speculative. The collective bargaining agreement between one MVMA member and the union representing its security guards includes a comprehensive grievance procedure that provides for arbitration of most disputes. See *Agreement Between General Motors Corporation and the International Union, United Plant Guard Workers of America (UPGWA)* 4-12 (1984). But it specifically excludes from arbitration disputes over Company "policies which extend certain benefits or privileges to eligible salaried employes." *Id.* ¶ 44. As to those policies, a special grievance procedure applies. *Id.* ¶ 47. To date, employees have filed two Section 301 suits against General Motors involving disputes over Company policies covered by ¶ 44. In both cases, employees pursued their grievances through the special procedure provided by ¶ 47, but sued because they were dissatisfied with the results of that procedure. See *Alford* v. *General Motors Corp.*, No. 88-CV-74720-DT (E.D. Mich. 1990); *Vargo* v. *General Motors Corp.*, No. 88-CV-60149-AA (E.D. Mich. 1989). The district court dismissed both suits, and a consolidated appeal is now pending in the Sixth Circuit.

As Professor Feller has emphasized, the answer to these questions is plain:

> [T]he contractual obligations assumed by the employer are limited to those enforceable through the grievance procedure. * * * This is shown most clearly in those cases in which the parties seek to make nonadjudicable and, hence, unenforceable, a rule set forth in the agreement. They normally do so by providing that a claim for violation of the rule shall not be arbitrable.

Feller, *General Theory* at 792-793.[13] Thus, as to contracts in which certain probationary employees can pursue discharge claims through the grievance procedure but not to arbitration, "[t]he parties plainly mean that such an employee shall have the right to have his grievance con-

[13] Professor Feller's expertise on the nature and intent of collective bargaining agreement terms derives not only from his academic research, but from his previous twenty years as a labor lawyer representing unions, including service as General Counsel of the Steelworkers and of the Industrial Union Department of the AFL-CIO. Feller, *General Theory* at 856 n.718.

sidered by higher management but that, if it agrees with the discharge, no one shall have the right to reverse that decision." *Id.* at 793.

Similarly, by providing in their contract that production standards are not subject to arbitration, General Motors and the UAW "plainly do not mean * * * [such] disputes * * * shall be adjudicable in other forums; they mean that they shall not be adjudicable at all." *Id.* at 794. By excluding a specific matter from arbitration, the parties to a collective bargaining agreement do not intend that a dispute over such a matter "shall be heard judicially, but that it shall not be heard at all." *Ibid.* That intention "is clearest when the agreement is an 'open' one in which the limitation on the issues that may be arbitrated is coupled with a comparable limitation on the no-strike clause so as to permit resolution of the dispute by economic contest." *Ibid.*

Quite simply, these are matters as to which management believes it is so important that it have unfettered discretion that it insists at the bargaining table that they be excluded from arbitration even though that insistence may make it harder to obtain agreement and might require concessions in other areas.[14] As a Department of Labor study of arbitration provisions found:

> Some exclusions [from arbitration provisions] undoubtedly were intended to preserve certain management prerogatives, others to preserve union prerogatives. * * * It seems reasonable to assume, however, that underlying many exclusions was a strongly held belief of one or both parties that the issue in question was too important or too subtle to be entrusted to a decision of a third party.

[14] These subjects may also raise issues which the union believes would be inappropriate or disadvantageous for third party review. See note 16, *infra*.

U.S. Department of Labor, *Major Collective Bargaining Agreements: Arbitration Procedures* 11 (1966). See also F. Elkouri & E. Elkouri, *How Arbitration Works* 96-97 (4th ed. 1985) ("There are some matters, too, which are so delicate or are considered to belong so intimately to one or the other of the parties, that they are not too readily submitted to arbitration. * * * Management naturally hesitates to submit to arbitration issues involving its normal prerogatives in the conduct of the business"); S. Slichter, J. Healy, & E. Livernash, *The Impact of Collective Bargaining on Management* 756-760 (1960).

Federal labor policy requires courts to enforce the intent of the parties that certain labor relations decisions not be subject to third-party review. As Section 203(d) provides, "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes." 29 U.S.C. § 173(d). Moreover, "[s]ince the employee's claim is based upon breach of the collective bargaining agreement, he is bound by terms of that agreement which govern the manner in which contractual rights may be enforced." *Vaca* v. *Sipes*, 386 U.S. at 184. Because the usual contractual device for making an issue unreviewable by *any* third party (including a court) is to exclude that issue from arbitration, when matters are expressly excluded from arbitration they should also be presumed to be unreviewable by a court in a Section 301 proceeding unless the parties clearly express the (unusual) contrary intent.[15]

[15] On occasion, parties to a collective bargaining agreement will exclude an issue from arbitration with the intent that enforcement

(Footnote continued on following page)

All that is left of petitioners' argument, then, is a claim that when *all* issues are excluded from arbitration, and the Union's only remaining contractual remedy after exhausting the grievance procedure is to go on strike, the Court should establish a broad exception to the general understanding and adopt a presumption that the parties intended to permit enforcement in a Section 301 action unless they expressly provide to the contrary. If their argument is based, as it should be, on how best to effectuate the intent of the parties and to give effect to the "method agreed upon * * * for settlement of grievance disputes," it is far from the mark.

It defies common sense to assume—in an environment in which arbitration is the norm and the exclusion of specific issues from arbitration means that the parties wish to preclude any third party review of those issues—that by excluding all issues from arbitration the parties intended those same issues to be adjudicable in court. It certainly makes no sense to assume that the parties who rejected use of the relatively inexpensive, expert forum of arbitration intended that disputes would be resolved through the costly and less reliable method of Section 301 litigation. Instead, the logical assumption is that the parties agreed

[15] *continued*
will be in the courts. When they do so, they make that intent explicit. See, *e.g.*, the no-strike/no lockout clause of the contract between Boeing and the Machinists, 1 *BNA Contracts* at 20:32 ("Any claim by either party that the other party has violated this Article shall not be subject to the grievance procedure or arbitration provisions of this Agreement, and either party shall have the right to submit such claim to the court"); Feller, *General Theory* at 796-797 n.517 (a clause in a contract between Douglas Aircraft and UAW dealing with rights to patents on employee inventions was not subject to arbitration, but the parties specified that "cause[s] of action arising out of such patent contract[s]" can nevertheless be brought in court).

to be bound by the result of the grievance process, with no further review by any third party. It is most likely that at the bargaining table either the employer insisted that its decisions not be subject to third party review and prevailed on that issue (almost certainly by agreeing to substantial concessions in other areas), or that the Union preferred the strike remedy to arbitration and insisted and prevailed on its position.[16]

Once again, Professor Feller explains that the intent of the parties to such contracts is that disputes not be adjudicable by *any* third party—including arbitrators, judges and lay juries—and that the parties are left to the process of negotiation and ultimately to their economic weapons. Feller, *General Theory* at 846-847. "Where the parties have agreed, for whatever reason, that the ultimate recourse shall be a test of economic strength * * *, it should require a clear showing that Congress intended to overrule that intention before a system of impartial adjudication, either judicial or arbitral, is imposed on parties who have shown that they do not desire it." *Id.* at 847.

What petitioners ask this Court to do is just that: to override the intent of the parties and establish an artificial

[16] It would be a mistake to assume that only management could favor an agreement that foreclosed arbitration and provided that the strike remedy would be available for unresolved disputes. As Professor Feller points out (*General Theory* at 846 & n.694), when unions are in a position of strength and believe they can get their way by striking or threatening to strike, they insist upon such arrangements. Thus in *Associated General Contractors* v. *Illinois Conference of Teamsters*, 486 F.2d 972 (7th Cir. 1973), an employer brought a Section 301 suit when the union threatened to strike over a dispute about the wage scale applicable to certain work. The Teamsters contract—at the Union's insistence—provided that the strike remedy rather than arbitration would be available to deal with unresolved grievances.

presumption that parties intended to permit judicial review of the results of grievance procedures unless the contract clearly states otherwise. Such a presumption—which would apply to contracts already negotiated—would be grossly inequitable. It would give petitioners and others similarly situated the right to obtain third party adjudication even though they bargained away that right in return for other concessions when they agreed to a contract without arbitration. That result would be contrary to both the intent of the parties and sound federal labor policy.

III. Federal Labor Policy Is Best Served By Not Permitting Section 301 Suits Over Nonarbitrable Labor Disputes.

Petitioners characterize the court of appeals' decision as "holding that the strike is [their] exclusive remedy for an alleged employer breach of the collective bargaining agreements." Pet. Br. 15. But what the court actually held was that the multistep grievance procedure was the exclusive and final means for resolving disputes under the Agreement. Pet. App. 2a-3a. To be sure, if that grievance procedure failed to resolve a dispute, the Union could call a strike. But there can be no doubt that the parties expected that most disputes would be resolved through the grievance procedure, not through strikes.

In considering petitioners' contentions, it is important to bear in mind that the grievance procedure prescribed in the Ring Screw/UAW contract is an appropriate and meaningful dispute resolution mechanism. The employees were represented by competent, sophisticated Union officials at each step of the process. They were able to state their case first to their foremen, then up the corporate ladder in several stages to high level company management. At each level, management representatives had the

authority to grant the grievance and reinstate the employees.

Grievance procedures of this type are not merely waystations on the road to arbitration. They provide a significant opportunity for employees and unions to present their grievances and have them resolved. In fact, many more disputes are resolved at the various steps of grievance procedures than are resolved through arbitration. This Court noted in *Vaca* v. *Sipes* that "less than .05% of all written grievances filed during a recent period at General Motors required arbitration, while only 5.6% of the grievances processed beyond the first step at United States Steel were decided by an arbitrator." 386 U.S. at 192 n.15. Another study of three large plants found that the employer granted in whole or in part 65% of all grievances and that less than 2% went to arbitration. S. Slichter, J. Healy, & E. Livernash, *The Impact of Collective Bargaining on Management* at 734-735. "The great majority of grievances are generally settled at the first stage; were it otherwise, higher management and union officials could easily become overburdened with the task of reviewing complaints." A. Cox, D. Bok, & R. Gorman, *Labor Law* 702 (10th ed. 1986).

To argue that a grievance procedure such as the one provided for in the Ring Screw/UAW agreements is not meaningful would be to argue that collective bargaining itself is not meaningful. As Dean Harry Shulman put it, the nature of the collective bargaining agreement—as a system of governance as much as an enumeration of rights and obligations—"makes collective bargaining an unending process in labor relations, and * * * makes the grievance procedure the heart of the collective agreement." III *Conference on Training of Law Students in Labor Relations* 669 (1947), quoted in F. Elkouri & E. Elkouri, *How Arbitration Works* 153-154 (4th ed. 1985). To disregard the

effectiveness and efficiency of the grievance procedure would be to disregard "the heart of the collective agreement" and to overlook the process by which the vast majority of disputes are actually resolved.

Grievance procedures such as the one at issue in this case are capable of handling a very large volume of workplace disputes. One study found that 28% of blue-collar union employees filed grievances during a two-year period. R. Freeman & J. Medoff, *What Do Unions Do?* 209 (1984). That figure almost certainly understates grievance filings because many of those employees may have filed more than one grievance during that time. Another study of three union plants found grievance rates ranging from 22.0 to 49.8 grievances per 100 employees per year. S. Slichter, J. Healy, & E. Livernash, *The Impact of Collective Bargaining on Management* at 734-735.

Extrapolating from that data, it is clear that millions of employee grievances are filed each year.[17] The great majority of those are settled without any need for arbitration. Available data do not permit an accurate estimate of the number of grievances that are not subject to arbitration and are thus potential Section 301 suits. But it is clear from the fact that at least 31% of agreements either do not provide for arbitration or exclude certain

[17] There are now approximately 11.7 million private sector employees covered by union contracts. U.S. Department of Labor, Bureau of Labor Statistics, Bull. 90-59, Table 2 (Feb. 7, 1990). Approximately 98.6% of the employees are covered by agreements with grievance procedures. *BLS Study* at 113. If—according to the lowest estimate—28% of those employees filed a grievance every 2 years (14% per year), 1,600,000 employees would file grievances each year. If the higher estimate of 49.8 annual grievances per 100 employees were correct, there would be 5,750,000 grievances per year.

issues from arbitration that there would be many thousands of such grievances each year.

The parties to collective bargaining agreements are entitled to select the method by which those thousands of grievances will be resolved. When parties have selected an efficient grievance procedure or other mechanism for resolving disputes, the Court should assume that they intended it to be exclusive, final and binding and did not intend to burden themselves and the courts with Section 301 litigation unless their agreement is clearly to the contrary.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted.

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